

Virginia Freedom of Information Advisory Council
Electronic Meetings Subcommittee
June 6, 2013
10:00 AM
General Assembly Building
Richmond, Virginia
Meeting Summary

The Electronic Meetings Subcommittee (the Subcommittee) held its second meeting on Monday, June 6, 2013 to consider HB 2032 (May), which would allow regional public bodies to conduct electronic meetings in the same manner as state public bodies, and would also remove the requirement that a public body hold one meeting each year at which no member participates using electronic means.¹

Ms. Dooley noted that at its last meeting the Subcommittee had asked staff to provide more information regarding regional public bodies, what they can do under current law regarding electronic meetings, and how the bill would affect them. To that end, staff presented a brief overview of current electronics meeting law. At the present time, the general rule is that only state level public bodies may hold electronic meetings. Such meetings require that a quorum of the body be physically assembled in one location, that remote locations be noticed and open to the public, and have other heightened notice and reporting requirements. Local and regional public bodies may not avail themselves of these types of meetings except in response to emergencies declared by the Governor.² However, there are other provisions that allow individual members of public bodies to participate by electronic means. Any member of any public body can currently call in no more than twice per year due to an emergency, or unlimited number of times due to a medical condition. For regional bodies, members can also call in if they live 60 miles or more from the central meeting location. There are other heightened requirements for such individual electronic participation as well.³ Staff discussed the history of these provisions, noting that the general idea for limiting electronic meetings to state level public bodies had been because state level public bodies' members are often geographically dispersed while local bodies are not. With regard to regional bodies, the 60-mile exception was added because some regional bodies are geographically dispersed similarly to state-level bodies, while others are more like local bodies, and 60 miles was seen as an appropriate distance to use as a limit. A definition of "regional public body" was added to § 2.2-3701 at the same time as the 60-mile exception:

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

¹ Committee members Dooley (Chair), Hamlett, and Selph were present; Mr. Whitehurst was unable to attend.

² See Va. Code § 2.2-3708.

³ See Va. Code § 2.2-3708.1.

Staff observed that the changes passed by the 2013 Session of the General Assembly, which were recommended by the FOIA Council, would allow individual electronic participation when "personal matters" prevented physical attendance, in the same section that currently allows participation due to a "personal emergency," and that state level advisory bodies would be permitted to hold an electronic meeting by audio-visual means without having a quorum physically assembled in one location, but that the provision for advisory bodies has a one-year sunset clause. The provision for "personal matters" will apply to members of all public bodies, including regional bodies, when it goes into effect on July 1, 2013.⁴

Staff also presented two documents concerning regional public bodies: (1) "Discretionary Authorities and Special Districts Available to Local Governments in Virginia" published by the Commission on Local Government in April, 2006, and (2) "Some Authorities and Special Districts in Virginia" published by the Virginia Association of Counties (VACo) in December, 2010. Staff spoke with the author of both documents, who indicated both were in draft form and might be somewhat out of date, but still provided relevant examples. The first document lists various types of bodies that may be created, the relevant provisions of the Code of Virginia that authorize them, their legal classification, and any structural provisions. The second document lists actual entities by name and type; in full, it contains over 700 different named bodies. Staff observed that several entities fit within the statutory definition of "regional public body," such as various airport authorities and commissions; some authorities were state-level in character rather than regional, such as the Fort Monroe Authority and the Virginia Commercial Spaceflight Authority; while others, such as the Northern Virginia Transportation Authority (NVTA), were clearly regional in jurisdiction but did not fall within the statutory definition of "regional public body" because of how its members were selected.⁵ Staff noted that the Delegate May had used NVTA as an example when discussing his bill with the Subcommittee at its last meeting, but that the definition of "regional public body" would exclude NVTA because the members of NVTA are not *appointed by the participating local governing bodies*. Therefore the definition of "regional public body" would have to be changed if the intent going forward was to include NVTA and any similar bodies that had regional jurisdiction, but did not fit within the terms of the existing definition.

Ms. Dooley opened the discussion to the Subcommittee and public. Phyllis Errico of VACo asked whether staff knew if anyone actually used the 60-mile exception; staff did not know of anyone who had. Ginger Stanley of the Virginia Press Association (VPA) observed that the "personal matters" change would provide relief to both local and regional public bodies, and stated that she would like to see it implemented before further changes were made. Ms. Hamlett stated that she was inclined not to take action now, but to wait and see how the changes work, then see if something else was needed. Mr. Selph agreed, stating he preferred to let the new rules have a chance to work before making further changes. Ms. Dooley concurred, and stated that she would report that the Subcommittee had considered the bill, but in light of the changes regarding "personal matter," the Subcommittee recommends taking no action at this time.

⁴ See SB 1263 (Stuart) and HB 2026 (Dudenhefer).

⁵ See Va. Code §§ 15.2-4830 through 15.2-4832.

Staff also noted that staff had previously been informed that a subcommittee of the Joint Committee on Technology and Science (JCOTS) had considered holding a series of electronic meetings using different technologies, and that the Subcommittee had expressed an interest in participating to gain first-hand knowledge of how the different electronic meetings technologies worked in practice. Staff reported to the Subcommittee that JCOTS had decided against holding these meetings this year due to logistical difficulties.

There being no further business, the meeting was adjourned.

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